Of the two remaining volumes on our list it is hard to write many words. Miss Jones is patriotic, bellicose, and slightly erudite; but both in her patriotic and her domestic pieces she is verbose and rhetorical, rather than earnest and truly lyrical. We confess to a lively mistrust of collections of verse presenting a frequent recurrence of those metres which require twice the breadth of the page. The chief merit of a great deal of the versification of the day lies in the brevity of its lines, as compared to the line of prose; but this merit is absent from Miss Jones's pages. They present a most formidable and impartial diffusion of matter. We conjecture that the praise most after this lady's heart would be the bestowal upon her performance of the epithet "spirited." This epithet we cordially concede. It is decidedly spirited, for example, on the part of a soldier's mother, to speak of being "impaled" by terror as to her son's fate. Miss Jones's analogies and metaphors are throughout of a terrible description. "Ghouls," "fiends," "tigers," and "scorpions" all play a prominent part. Occasionally, however, Miss Jones imparts a singular subtlety to her portrayal of terrible sensations; as when she represents the cry of the whippoorwill as "taxing the sense with a dulcitude fearfully keen."

The poetic style of the author of "The Schönberg-Cotta Family," on the other hand, is colorless to a fault. Her work is essentially common, destitute alike of the fervor of piety and the graces of poetry. We should be sorry to impugn the sincerity of the author's devotional feelings; but if devotional poetry owes something to religion, it also owes something to art, or at least to taste; and when it is indifferent to art and taste, it suffers the penalty of being unreadable.

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11. — *The Constitutional Convention, its History, Powers, and Modes of Proceeding.* By JOHN ALEXANDER JAMESON, Judge of the Superior Court of Chicago, and Professor of Constitutional Law, etc. in the Law Department of Chicago University. New York: Charles Scribner & Co. 1867. 8vo. pp. xix., 561.

MANY books have been written to expound the Constitution of the United States and those of the several States, but Mr. Jameson is the only person who has attempted to set forth the rules which govern and limit the conventions which have formed these constitutions; and what Mr. Jameson has attempted to do he has done well. We put down his book convinced that he has collected all that is valuable from the records of the various conventions, that he has used his material aptly, and that to the authority of precedents he has often added the weight of a sound

opinion and judgment of his own. This book would be a very valuable one at any time; but now, when the people of ten States are to make new or remodel their old constitutions, it contains matter of especial interest and importance, not only for those who are to make new constitutions, but for those who have declared that those constitutions shall be of a certain character. Though there have been already more than one hundred and fifty constitutional conventions held in the United States, yet so different have been the circumstances under which they have been called, and so powerful the influences of the political parties which, for the time, have controlled them, that even now many of the rules which should govern them are undetermined.

It is important to understand the author's distinction between a Revolutionary and a Constitutional Convention. The former he defines as a part of the apparatus of revolution. It consists of men who, in times of political crisis, assume or have cast upon them provisionally *the functions of government.* They either supplant or supplement the existing governmental organization. In short, a revolutionary convention is simply a provisional government. Most of the conventions of this sort which have been held in this country assembled in the course of our two civil revolutions, — those of 1776 and 1861. The other class of conventions are constitutional, not simply as having for their object the framing or amending of constitutions, but as being within rather than without the pale of fundamental law; as ancillary and subservient, and not hostile and paramount to it. They are worked by the side and at the call of a government pre-existing and intended to survive them, for the purpose of administering to its special needs. A revolutionary convention may digest and enact amendments to a constitution, and yet not become constitutional. But if a constitutional convention presumes to overpass the limits imposed by its commission, by custom, or by the maxims of political prudence, and to do acts requiring the exercise of a revolutionary discretion, it ceases to be constitutional, and becomes in the eye of the law, *ab initio*, a revolutionary convention. The confounding the distinction between these two conventions has been the origin of dangerous misconception.

To show where the power to make and amend constitutions resides, Judge Jameson defines sovereignty. It is indefeasible and indivisible; but the sovereign body is not so. Sovereignty itself is inalienable; but the *exercise* of sovereignty may be delegated. Sovereignty manifests itself indirectly through individuals, and directly by organic movements. In the United States the body of the people, to whom there is politically no superior, are sovereign. This sovereign has delegated power to the Electors, the Legislature, the Convention, the Executive, and

the Judiciary. That the sovereignty resides not in the several States, nor in the people of the several States, but in the people of the United States, is shown by the modes of ratification of the Federal Constitution, by the expressed opinions of contemporary statesmen, and of subsequent statesmen, judges, and publicists. In the framing of their own constitutions, the people of the several States act as if they were sovereign, but they are in subordination to the real sovereign, the American nation, and their local constitutions, which they frame, are all subject to the guaranty of the national government.

In the chapter on Constitutions, the author defines two kinds of constitution, — one "considered as an objective fact," and the other "as an instrument of evidence." The former is "that special adjustment of instrumentalities, powers, and functions by which the form and operation of a commonwealth are determined." The latter is "the result of an attempt to represent, in technical language, some particular constitution existing as an objective fact." Constitutions of the first kind are not the results of compact, but are part of the system of human society devised by the Creator "in the beginning." But constitutions, as instruments of evidence, are in part bare transcriptions, and in part the result of compact, but must be the sole guide as to all matters and persons within their jurisdiction. As the constitution as an objective fact develops with the growth of the nation or state, the constitution as an evidence of that fact must develop correspondingly. Constitutions in their evidentiary character are, in origin, either cumulative or enacted; in character, unwritten or written. For a community who possess an accurate understanding of their political rights and duties, and sleepless vigilance to detect violations of the constitution, together with the utmost promptness and energy to resist and punish them, an unwritten constitution would on the whole, in the author's opinion, be preferable. But for any other community a written constitution is better, as immobility, with its train of possible evils, is less dangerous than movement that is ill judged or unconstitutional. All written constitutions should, however, embrace efficient machinery for their amendment; and to be efficient it must not move so easily as to amend itself, nor with so much difficulty that an amendment would break the machine. The citizens, too, need a political conscience impelling them to make amendments to the written constitution when such as are really important have evolved themselves in the constitution as a fact.

With some discussion as to the character, jurisdiction, and supremacy of the Constitution of the United States, and those of the several States, Judge Jameson next comes to the inquiry, first, what is the proper mode of initiating and calling a convention. Certainly it should not be

done through the intervention of unofficial persons, for their acts would lack authority and would be illegitimate. The legislature, under such restrictions as the sovereign body shall prescribe, or as shall accord with the maxims of political precedence, is the proper body to originate a convention. The legislature may call a convention without the intervention of the electoral body, or may recommend a call, and then refer the question to a vote of the electors, and finally on an affirmative vote of the latter issue the call.

The various conventions which have been held in the United States are next examined, in order to determine if the rules given as authoritative are also established by precedent; and that nothing may be considered as a precedent except what is legal, it becomes important to define *legitimate* and *revolutionary* as applied to conventions. To be legitimate, an institution or public body must have in its inception the stamp of legality, of conformity to the law of the land, which law and the proceedings in which the institution originated must conform to the fundamental principles of the Constitution, and to those prudential maxims which define the limits and conditions of a safe constitutional rule, from the point of view of the existing government. Conventions are revolutionary when they do things for which there is no law, or which are in violation of law. There can then be no degrees to a revolution except in its effects; nor need bloodshed and violence be necessarily imputed to revolution, for a revolution may be only an angry collision of parties, or it may be consummated quietly, without a breach of the peace, or even excitement.

Of all the conventions of the States and United States which were held during the Revolutionary period, extending from 1776 down to the establishment of the Federal Constitution in 1789, our author says that most of them were revolutionary, either in their origin or in their methods of procedure, or in both. This imputation against the character of these bodies, however, is not intended as an impeachment of them as having no basis in political necessity, but only as a denial to them of regularity and legality as constitutional conventions. Of the conventions that have been convened in Vermont, Kentucky, Tennessee, Maine, and West Virginia, for framing constitutions for new States to be formed within the territorial jurisdiction of States already members of the Union, he says that not a single instance of the dismemberment of a State has ever occurred without proceedings more or less irregular or revolutionary; for though the consent of Congress has been always obtained, yet either the consent of the parent States has been wrung from them by the pressure of events, or the conventions have been illegally called.

To be legitimate, a convention called to erect a State out of Federal territory, or to frame for it a constitution, must have been assembled with the knowledge and consent of Congress; it must have been called by a formal act of that body, and must submit the fruit of its labor to the same assembly for ratification or rejection. There have been twenty-five such conventions, twelve of which have been regular. The others were irregular, because they were assembled without the formal assent of Congress, though they claimed to have had such assent in a provision of the Ordinance of 1787, or in treaty stipulations, giving to special Territories the right to be admitted as States into the Union on a contingency specified. The convention of Oregon alone "was not only irregular and illegal, but inexcusable."

The third variety of conventions, called since March 4, 1789, consists of such as have been assembled for the revision of existing constitutions of States, members of the Union.

These may be subdivided into several classes, as follows: —

(a.) Such as have been convened for legitimate constitutional purposes, regularly; that is, —

I. By the legislatures of the respective States, acting either, —

1. In pursuance of special provisions of such existing constitutions, or

2. If no such provision exist, under their general legislative authority.

II. By special bodies created by the Constitution, called Councils of Censors.

(b.) Such as have been called for legitimate constitutional purposes, irregularly; that is, either, —

1. In disregard of constitutional provisions prescribing particular modes in which amendments to the constitution should be effected; or

2. In defiance of the existing governments of the States concerned, though in pretended conformity to constitutional principles.

(c.) The so-called Secession and Reconstruction Conventions held before and since the late civil war.

Of Class (a), Division I., Subdivision 1, there have been seventeen. Of Subdivision 2, there have been twenty-five. These last the author considers as legitimate, as being directly within the scope of the ordinary legislative power. Vermont is the only State whose Constitution provides for conventions to be called by Councils of Censors.

Of Class (b), Division 1, there have been but three instances, — that of Pennsylvania of 1789, that of Delaware of 1793, and that of Maryland of 1850. In their origin, Mr. Jameson declares that these three conventions were wholly illegitimate, but he does not deny that the revolution consummated may have been morally defensible because

unavoidable. The so-called "People's Convention" of Rhode Island, held in 1841, is the only instance of Class (b), Division 2.

The so-called Secession Conventions were called avowedly to effect by revolutionary means the disruption of the American Union; and though in some of the States they were regularly called, yet they are to be considered as revolutionary, because the legislatures calling them transcended their constitutional authority in so doing. And every man who participated in the call was violating his oath to support the Constitution of the United States, which was a part of the Constitution of his own State. These conventions were also irregular and revolutionary, because they assumed the general powers of administration and government.

Applying his test of revolutionary and illegitimate, he finds that all the conventions that have been held for what is called the reconstruction of the South are revolutionary.

In regard to the powers of a convention, Judge Jameson holds that it is not sovereign, though it may be considered as invested by the sovereign society with the exercise of an important sovereign power. Together with the legislature, the judiciary, and the executive, it constitutes the apparatus with which a sovereign society does its work as a political organism. Its peculiar office is to renew or repair the governmental machinery. And a convention cannot fill vacancies in the various departments of the government, nor can it remove those holding office under the State, nor instruct them by any direct proceeding. As the author does not regard the right of suffrage as a natural right, he arrives at the conclusion that a convention may, by constitutional provision, effect the disfranchisement of existing electors.

The advisory power of a convention is so great, that it can advise, and so indirectly limit or restrict, the sovereign in the choice of its servants; but as its powers are only advisory, its members can hardly be expected to receive advice or instructions from the electors as to the measures it shall advise them to adopt.

With the judiciary and executive of the State, a convention has ordinarily no relations, but its connection with the legislature is important. The members of the legislature are representatives, the members of the convention are delegates. The former body enacts statute laws, and is to a certain extent independent of the sovereign; the latter recommends the fundamental law to the sovereign, and only acts as its committee. As to the powers of a legislature over a convention, the author holds that it should prescribe whatever a prudent foresight may indicate as proper and expedient. It should see to it that there are proper regulations for securing a fair representation of intelligent citi-

zens, and that its numbers are limited. It should fix the time and place of its meeting, should appropriate money for its necessary expenses, should determine the form of its organization, and should provide for the proper submission of the fruits of its labor to the people. That the work should be properly submitted is exceedingly important, and the method of this submission is the work of the legislature rather than of the convention. As a legislature cannot frame, amend, or suspend the operation of the fundamental law, so a convention cannot exercise legislative powers. The safety of the people demands that each body shall attend to its own appropriate work, and nothing but party zeal could have led the Illinois Convention of 1862 to prescribe the "times, places, and manner of holding elections for Senators and Representatives" in Congress, and to assume the power to ratify amendments to the Federal Constitution. Conventions have sometimes appropriated money to pay for their expenses, and for other purposes; but they cannot ordinarily have such power, and a State treasurer might well hesitate to pay money on their order.

In regard to their own meetings, conventions are possessed of such powers as are requisite to secure their comfort, to protect and preserve their dignity and efficiency, and to insure orderly procedure in their business; and whenever the powers inherent in all public assemblies are found insufficient to protect the convention from insult, or to expedite its business, it may call upon the public authorities for aid. The members of conventions should enjoy the privilege of protection in debate, and of freedom from arrest; and in their right to such privileges they should stand on the same footing as jurors and witnesses.

When the work of a convention is ended, the convention dies, and cannot provide for its reassembling. It cannot, then, be maintained that the body which met at New Orleans on the 30th of July, 1866, can be considered as a legal continuation of the Convention of 1864. For the original Convention had no power to order its President to reconvoke its members. And even if the President had been legally vested with such a power, he did not use it; but the body met at the call of a man whom they themselves had chosen for the very purpose of issuing the call. Certainly no such assembly could have been legitimate. Regarding the first Convention as revolutionary, Mr. Jameson claims that the President of the United States would have had the undoubted right to disperse the second; and, on the other hand, if Louisiana was in July, 1866, restored to her constitutional relations with the Union, the President had no more right to interfere with the meeting of July 30th than with any constitutional convention, whether real or pretended, in any of the States, and could only suppress the same on

application of the legislature of such State, or of the executive, if the legislature could not be convened.

The Constitutional Convention is, of all our institutions, the one through which sedition and revolution would most naturally seek to make their approaches, the only check upon it being the power of rejection which the people should have over all its recommendations. It is, then, the duty of the convention in all cases to submit its work to the people, unless submission be expressly dispensed with by the preceding constitution, or by the convention act. That most of the constitutions framed by the first conventions in the original thirteen States, and by the Secession conventions in the Rebel States, were never submitted to the people, for fear that they might not be adopted by them, is evidence that a minority can bring about what the majority oppose, by perverting the objects of a convention, and refusing to submit their work to the electors.

The legislature is the proper body for prescribing the regulations for submitting the constitution to the people. But sixty-three of the seventy-eight conventions that have submitted their constitutions have made their own rules and regulations for the submission. When the constitution is submitted to the electors, we find that they appear in a new character, — they are then really legislators, and they are enacting laws, fundamental laws; and whether they shall enact the constitution as a whole or in parts should depend on the peculiar character of the constitutions recommended to them.

We have not room to consider with Judge Jameson the comparative merits of the various methods proposed in various constitutions for effecting their own amendment. To judge from the constitutions that have been adopted, the advantages of each method are about equal; for twenty-four have contained provisions authorizing the call of conventions for this purpose, twenty-three authorize the proposing of amendments by the legislature, and twenty authorize both modes.

That Mr. Jameson has treated fairly the political questions involved in his topic, we think that any reader will admit. Of the Rebel States after the surrender of General Lee, he says: "Here, then, were brought again into relations of practical subjection to the Union certain integral populations which had been constitutional States, but which, having, by truancy from constitutional courses, lost something necessary to that character, were such no longer, were, indeed, little more than 'geographical denominations.'" They therefore needed constitutions, and so conventions. In his judgment there were four possible modes of calling such conventions: —

First. The inhabitants of the Rebel States might by a spontaneous movement have called them.

Second. The so-called legislatures of the several Rebel States might have originated them.

Third. The Congress of the United States might have inaugurated the movement.

Fourth. The requisite nucleus of reconstruction might have been provided by the President of the United States.

The first course would have been irregular, not to say revolutionary; the second was politically impossible; the third would have been very irregular; and the fourth would have been legitimate only as a war measure.

All these methods being liable to objection, he concludes that the third was preferable; although this action of Congress would have been treating the Rebel communities as if they were Territories. The author says: "They were not constitutional States. But neither were they constitutional Territories. They were States whose practical relations to the federal whole were in a state of disruption. In other words, they were *quasi* States so far as their historical relations to the Union were concerned, but *quasi* Territories in relation to the exercise of federal rights." He further defends the third method as quite constitutional, rightful, and regular, because the question of reconstruction is practically a federal one, and ought to be settled by federal authority.

After two years of trial of the fourth method of reconstruction, the people of the North, learning from sad experience, have come to adopt Judge Jameson's opinion, and Congress has just enacted a law to provide for the more efficient government of the Rebel States. Admitting, then, that Congress (whether rightfully or wrongfully we do not further consider) has assumed its jurisdiction over the Rebel States, has it the right to require that their constitutions shall be of a certain form before they are again entitled to representation? Most certainly it has. Congress has the right to admit Territories as States; and the right to admit involves the right to refuse to admit, until prescribed conditions are not only in fact fulfilled, but can be ascertained to have been fulfilled.

We heartily commend Judge Jameson's book to the study of all those engaged or interested in the great work of the reconstruction of the Union.